

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: HEALTH CARE RULES

DATE: JULY 22, 2005

The 2005 reform legislation introduced the concept of a health care business, defining it in § 101(27A) of the Code. It also added §§ 333, 351, and 704(a)(12) to the Code. Those sections require the appointment of a patient care ombudsman in essentially all cases involving health care businesses (§ 333), set minimum notice requirements and specific methods by which patient records can be destroyed (§ 351), and require trustees to use all reasonable and best efforts when seeking to transfer patients from health care facilities that are closing. Health care businesses can range from full service hospitals, to nursing homes, to outpatient clinics, and even individual health care providers. The patients of these businesses will also vary greatly from the person who seeks a single treatment (stitches in the emergency room) to a long care patient suffering from dementia. The Subcommittee on Attorney Conduct and Health Care considered all of these issues and recommends the adoption of five new rules to implement these new provisions in the Bankruptcy Code.

RULE 1021 – Health Care Business Case

This rule implements the definition of a health care business by requiring the person filing a petition to state whether the debtor is a health care business. The petition form is also amended to include a check box for health care businesses. The statutory definition offers some room for interpretation, so the rule provides that the initial designation of the debtor either as a

health care business or not governs. The rule also recognizes that others may disagree with the designation can move the court to change the designation. The designation is especially important because the court must order the United States trustee to appoint a patient care ombudsman almost always when the debtor is a health care business.

RULE 2007.2 – Appointment of Patient Care Ombudsman

Under § 333(a) of the Code, the court must order the United States trustee to appoint a patient care ombudsman unless the court finds that the appointment is unnecessary to protect patients in the particular case. The rule covers the normal situation in which a patient care ombudsman will be appointed, and it also provides procedures for the termination of the appointment (for example, the court could determine on motion of a party in interest that the level of patient care is excellent and there is no longer a need for an ombudsman) as well as the appointment of a patient care ombudsman after the court had decided not to appoint an ombudsman at the start of the case, or after the termination of an appointment. The rule somewhat parallels Rule 2014 that governs the appointment of professional persons in that Rule 2007.2 requires the person appointed to file a verified statement setting out information that will allow parties to determine if the person is disinterested as required by the Code.

RULE 2015.1 – Patient Care Ombudsman

Section 333(b)(2) of the Code requires the patient care ombudsman to file periodic reports regarding the quality of patient care being provided by the debtor. Subdivision (a) of the rule requires the patient care ombudsman to give 10 days' notice of those reports and sets out the information that the notice must contain. Subdivision (b) of the rule governs the process that the patient care ombudsman must follow to obtain access to confidential patient records. Given the

range of persons who may be patients in these cases, the notice requirements extend beyond the patient to family members and other contact persons of whom the debtor or trustee are aware.

RULE 2015.2 – Transfer of Patient in Health Care Business

Section 704(a)(12) was added to the Code to govern the efforts of trustees to transfer patients to another health care facility when the debtor's health care business is closing. The transfer of patients can be very difficult, and the Code section limits the trustee's ability to transfer the patients. The new facility must be located within the vicinity and it must provide substantially similar services with reasonable quality. The rule establishes a notice requirement that the trustee must meet prior to transferring patients. This gives the patients and their families an opportunity either to challenge the trustee's proposed action or to find another facility in which to relocate. The rule provides the court with authority to alter the notice period. The notice adjustment protects against the need for an immediate or near immediate transfer (fire marshal declares the facility unsafe, etc.).

RULE 6011 – Disposal of Patient Records in Health Care Business Case

This rule implements § 351 of the Code. That section provides substantial detail as to the disposal of patient records including an elaborate notice system that must be followed for one year prior to the disposal of the records. The statute also sets out the manner in which records can be destroyed. The rule requires the trustee to obtain court approval of the notice prior to its publication, and it also includes a list of information that must be included in the notice. Finally, the rule requires the trustee to file a report that the records have been destroyed.